

**ARBITRAL TRIBUNAL CONSTITUTED PURSUANT TO ARTICLE 287
OF THE UNITED NATIONS CONVENTION ON THE LAW OF SEA
AND IN ACCORDANCE WITH ANNEX VII THERETO**

In the Matter of an Arbitration Between

GUYANA and SURINAME

ORDER No. 1 of 18 July 2005

ACCESS TO DOCUMENTS

WHEREAS on 4 November 2004, Guyana sent a letter to the President of the Tribunal notifying him, inter alia, that Guyana had encountered difficulty in the preparation of its Memorial, due to “Suriname’s objection to Guyana’s access to relevant historical materials in the archives of the Netherlands Foreign Ministry”;

WHEREAS on 22 December 2004, Guyana sent a further letter to the President, requesting, inter alia, an Order from the Tribunal “reminding both parties that it is their obligation to act in a spirit of co-operation, and instructing them to refrain from blocking one another’s access to the relevant files in The Netherlands or the United Kingdom”, and instructing Suriname “to advise The Netherlands that it withdraws its objection [to Guyana’s access to the historical materials in the archives of The Netherlands Foreign Ministry] of 7 December 2004”;

WHEREAS Suriname, in its letter to the President dated 27 December 2004, and in response to the letter of Guyana dated 22 December 2004, stated, inter alia, that “The letter of 22 December 2004 misrepresents the situation and seeks from the arbitral tribunal an extraordinary Order that is uncalled for . . . The records in question are not public . . . They cover many sensitive subjects, including national security matters and matters pertaining to Suriname’s other territorial disputes with Guyana”;

WHEREAS Guyana, in a letter to the President dated 4 January 2005, noted, inter alia, that it would be prejudiced in preparation of its Memorial if it were not granted access to the files in question, and renewed its request that the Tribunal, in the interest of “fundamental fairness”, “adopt an Order requiring both parties to cooperate and to refrain from interference with each other’s attempts to obtain documents or other information from non-parties; and, in the case of any interference already consummated, to take all necessary actions to undo the effects of such interference”;

WHEREAS the Tribunal in its letter to the parties dated 17 January 2005, solicited Suriname’s comments on Guyana’s letter dated 4 January 2005, and emphasized to both parties the importance of equality of arms and good faith cooperation in international legal proceedings, and recalled that these principles are laid down in the instruments governing the arbitration, including articles 5 and 6 of Annex VII to the Convention, and article 7(1) and (2) of the Tribunal’s own Rules of Procedure;

WHEREAS on 27 January 2005, Suriname responded to the Tribunal's 17 January 2005 letter, and commented on Guyana's letter dated 4 January 2005, observing, inter alia, that "there are valid reasons [that archives not in the public domain] should not be made available to Guyana", elaborating that some of the files in question are "unrelated to the maritime boundary dispute" and involve third Party states;

WHEREAS Guyana, in its letter to the President dated 1 February 2005, renewed its request for an Order "directing Suriname to take such steps as may be necessary and are within its powers to ensure that Guyana has access to those files which are in the archives of the Netherlands Foreign Ministry and in respect of which it has presented (or may in the future present) a request for access, and which pertain to the present dispute";

WHEREAS the Tribunal in a letter to the parties dated 7 February 2005, requested from Guyana "a list of the specific documents and information in the archives of the Netherlands Ministry of Foreign Affairs it is seeking to access, indicating in general terms the relevance of each item solely as it pertains to the maritime boundary dispute before this arbitral tribunal", and from Suriname requested a response "as to whether the specific items sought by Guyana in that list should be released to Guyana, and if not, on what basis they should be withheld";

WHEREAS Guyana, in its letter to the President dated 14 February 2005, in response to the tribunal's letter dated 7 February 2005, set out a list of documents in the Netherlands Foreign ministry it is seeking to access, and a list of subjects those documents "consist of, discuss or relate to, [. . .] all of which self-evidently pertain directly to the maritime boundary dispute presently before the tribunal";

WHEREAS Suriname, in its letter to the President dated 21 February 2005, stated in relation to Guyana's list, submitted with its 14 February 2005 letter, that "Guyana has not identified a single specific document that it needs nor has it even attempted to explain why it needs the documents in question", and that "Suriname's position is that none of the items on Guyana's list [. . .] is a file or document that Suriname has an obligation under international law to make available to Guyana." Suriname further asserted in that letter that the Tribunal's neutrality might be compromised if it were to "decide which [documents] might help one side to prove its case against the other", and that Guyana's request is premature – the "proper procedure" for the Tribunal to follow is "to wait until Suriname has submitted its counter-memorial in the Fall of 2005 and for the tribunal then to decide whether it has the power to order that the documents be made available to Guyana";

WHEREAS Guyana submitted its Memorial on 22 February 2005;

WHEREAS Guyana, in its letter to the President dated 2 March 2005, stated that "since access to [the] files was denied, Guyana [was] not in a position to identify the documents with any greater precision", and further set out modalities by which the Tribunal might examine the documents in question, stating that "it would not be too early (or too late) for the tribunal now to adopt a procedure for reviewing the requested documents for the purpose of deciding their relevance to the legal and factual issues raised in this case";

WHEREAS Suriname, in its letter to the President dated 9 March 2005, set out that Guyana had not complied with the Tribunal's request in its letter dated 7 February 2005, and stated that ". . . therefore, we believe that there is no basis for the tribunal even to consider the impracticable

procedure now suggested by Guyana”, and reiterated its position that “. . . Guyana’s request for wholesale access to the restricted Dutch archives should be denied or at least held in abeyance until after Suriname’s Counter-Memorial is submitted”;

WHEREAS Guyana, in its letter to the President dated 28 March 2005, stated that "Guyana requires access to the documents at the earliest possible time, so as to allow sufficient time for their precise translation from Dutch to English, careful review of their contents, and their potential use in connection with the submission of Guyana’s Reply”, adding that, “Due to the shortness of time . . . Guyana requires access to the documents before Suriname’s Counter-Memorial is filed”;

WHEREAS Suriname, in its letter to the President dated 30 March 2005, noted that Guyana’s letter is “. . . highly inappropriate”, and, “[t]his matter has been fully discussed . . .”;

WHEREAS the President, in his letter dated 2 May 2005 requested the Parties to provide further written submissions concerning Guyana's Application for an Order Requesting Access to Documents in the Netherlands' Archives;

WHEREAS the parties on 13 June 2005 submitted further views on Guyana's Application for an Order Requesting Access to Documents in the Netherlands' Archives;

WHEREAS in a letter dated 23 June 2005, the President of the Tribunal invited the Parties to a meeting in The Hague on 7 and 8 July 2005, at which, inter alia, each Party would be given the opportunity to present its case on access to documents held in the Netherlands national archives, and informed the Parties of the Tribunal’s intention to issue an Order disposing of this matter subsequent to the meeting;

WHEREAS the Tribunal met with the Parties in The Hague on 7 and 8 July 2005, and heard the Parties’ arguments on this issue;

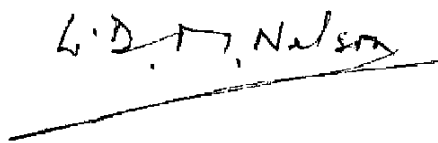
WHEREAS, having taken into account all of the foregoing, the Tribunal recognizes that

- a) the principles of equality of arms and good faith cooperation in international legal proceedings are laid down in the instruments governing the arbitration, including articles 5 and 6 of Annex VII to the Convention, and article 7(1) and (2) of the tribunal’s own Rules of Procedure;
- b) the work of the Tribunal would be facilitated by having the Parties provide it with all relevant documents and information;
- c) each Party may nevertheless have a legitimate interest in the non-disclosure of information that does not relate to the present dispute, or which, for other valid reasons, should be regarded as privileged or confidential.

THE ARBITRAL TRIBUNAL UNANIMOUSLY DECIDES AND ORDERS:

1. the Tribunal shall not consider any document taken from a file in the archives of the Netherlands to which Guyana has been denied access;
2. Suriname shall take all measures within its power to ensure that Guyana have timely access to the entire file from which any such document already introduced or to be introduced into evidence was taken, either by withdrawing its objections made to the Netherlands government, or, if this proves unsuccessful, by providing such file directly to Guyana;
3. each Party may request the other Party, through the Tribunal, to disclose relevant files or documents, identified with reasonable specificity, that are in the possession or under the control of the other Party;
4. the Tribunal shall appoint, pursuant to article 11(3) of the Tribunal's Rules of Procedure and in consultation with the Parties, an independent expert competent in both the Dutch and English languages;
5. the expert shall, at the request of the Party producing the file or document, review any proposal by that Party to remove or redact parts of that file or document for the reasons set forth under (c) in the last preambular paragraph of this Order.
6. any disputes between the Parties concerning a Party's failure or refusal to produce, in whole or in part, any document or file referred to in paragraphs 1 and 2, shall be resolved in a timely manner by the expert referred to in paragraph 4 of this Order;
7. as provided in article 11(4) of the tribunal's Rules of Procedure, the Parties shall cooperate fully with the expert appointed pursuant to paragraph 4 of this Order.

On behalf of the Arbitral Tribunal

A handwritten signature in black ink, reading "L. D. M. Nelson", is written over a horizontal line that extends across the page.

L. Dolliver M. Nelson, President
18 July 2005